85-878

Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

LUIS M. CAMACHO, DON C. WARNER, BERTHA L. DUENAS, FRANK C. CRUZ, and JESUS B. PAULINO,

Petitioners

v.

WILLIAM K. BUNYAN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Does the retrospective application of section 8113(b) of the Guam Gov't Code serve legitimate governmental interests?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
I. THE QUESTION PRESENTED IN THIS CASE IS OF THE GREATEST IMPORTANCE TO THE TERRITORY OF GUAM IN THE IMMEDIATE FUTURE AND IN THE LONG-TERM	6
II. THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS MISAPPLIES THIS COURT'S DECISIONS IN ZOBEL V. WILLIAMS, 457 U.S. 55 (1982), AND HOOPER V. BERNALILLO COUNTY ASSESSOR, 53 U.S.L.W. 4827 (JUNE 24, 1985)	8
CONCLUSION	17
APPENDIX A	
APPENDIX B	

TABLE OF AUTHORITIES

Cases	Page
First National Bank of Arizona v. Cities Service Co., 391 U.S. 253 (1968)...	17
Hooper v. Bernalillo County Assessor, 53 U.S.L.W. 4827 (June 24, 1985)...	8, 9, 10, 13, 15, 17
National Labor Relations Board v. Great Dane Trailers, 388 U.S.26 (1967)...	18
Puerto Rico v. Rubert Co., 309 U.S. 543 (1940).....	8
Radiant Burners, Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 659 (1961)....	18
Russell v. Hodges, 470 F.2d 212 (2d Cir. 1972)	13
Soto-Lopez v. New York City Civil Service Commission, 755 F.2d 266 (2d Cir.), review granted, No. 84-1803, 534 U.S.L.W. 3903 (July 1, 1985).....	15, 17
Zobel v. Wiliiams, 457 U.S. 55 (1982).....	8, 10, 15, 17

Constitutional Provision	
Equal protection clause of the fourteenth amendment to the United States Constitution.....	2

Statutes	
Title IV, Guam Gov't Code § 8113.....	2, 4, 5, 12, 14, 16
N.Y. Civ. Serv. Law § 85	15

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on September 3, 1985.

OPINIONS BELOW

The Court of Appeals for the Ninth Circuit reversed the summary judgment of the United States District Court for the District of Guam and remanded the case for further proceedings. The opinion of the Court of Appeals [APPENDIX A] is not yet reported. The opinion of the District Court [APPENDIX B] is not officially reported.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was rendered on September 3, 1985. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amendment 14 (applicable part):

> No state shall . . . deny any person within its jurisdiction the equal protection of the laws.

Title IV, Guam Gov't Code § 8113:

> Any bona fide resident of Guam, who receives his graduate or undergraduate degree from an accredited

> institution and is employed by the government of Guam after obtaining such degree, may claim retirement credit equal to the period of time, including vacations, which a full-time student would normally take to complete the program leading to the degree he received, or any lesser period he may elect to claim, by paying to the Fund the appropriate member's and employer's shares based on the period of credit sought to be obtained and his salary when he begins employment with the government of Guam; provided, however, that this Section shall apply only to those persons:
>
> (a) who received their degrees after June 1, 1945;
>
> (b) who were bona fide residents of Guam at the time they began their undergraduate studies; and
>
> (c) who had been employed by the Government for at least ten (10) years as full-time, locally hired employees.

STATEMENT OF THE CASE

The Respondent, William K. Bunyan, is a teacher employed by the Government of Guam. He has been so employed since 1963. In 1958, the respondent obtained his Bachelor of Science degree from Kansas State College, and in 1959 he obtained his Master of Science degree from Kansas State University. At the time he obtained the degrees,

the Respondent was a resident of the State of Kansas.

In 1978 the Legislature of Guam enacted § 8113(b) of the Government Code Annotated. Section 8113(b) gives a retirement credit to Government of Guam employees if, and only if, they were residents of Guam when they started their undergraduate studies.

Section 8113(b) applies both prospectively and retrospectively. The statute's retrospective application distinguishes between two classes of present Guam residents that began working for the Government of Guam before 1978. One class of present Government of Guam employees resided in Guam when they started their undergraduate studies. Section 8113(b) operates retrospectively to give this class added retirement credit. The other class of present Government of Guam employees did not reside in Guam when they started such studies. Section 8113(b) denies this class additional retirement credit. Respondent is in the latter class.

On June 7, 1984, the Respondent filed suit in the District Court for the Territory of Guam contending that the retrospective distinction made by § 8113(b) is violative of the Equal Protection Clause of the United States Constitution. In his action Respondent specifically maintained that § 8113(b) could not withstand scrutiny under the rational basis test. The District Court granted summary judgment in favor of the present Petitioners, finding that the classification created by the residency requirement contained in § 8113(b) was reasonably related to the purpose of the statute and did not violate the equal protection clause. On September 3, 1985, the United States Court of Appeals for the Ninth Circuit reversed the District Court on the basis that a distinction between classes of bona fide residents cannot be rationally related to a legitimate purpose.

REASONS FOR GRANTING THE WRIT

I

THE QUESTION PRESENTED IN THIS CASE IS OF THE GREATEST IMPORTANCE TO THE TERRITORY OF GUAM IN THE IMMEDIATE FUTURE AND IN THE LONG-TERM.

The immediate effect of the decision by the Ninth Circuit Court of Appeals is to create the possibility of substantial additional liability for the Guam Retirement Fund. The decision would potentially allow large numbers of previously unqualified individuals to purchase additional retirement credit. Such a situation would impose additional liabilities on the Fund for which it is ill-prepared. Indeed, the decision of the court below might well compel the Guam legislature to amend the statute and to remove the credit provision altogether. The provision in question has served a legitimate governmental purpose since its enactment in 1978, but the additional burden resulting from the lower court's decision might very well prove to be its undoing.

In addition to the immediate effect of the Ninth Circuit decision, there may also be long-term effects. It is only natural that the Government of Guam wants to encourage its residents to seek higher education and to then return to Guam and enter public employment once they have done so. By doing so, Guam may keep its best people from leaving for better opportunities elsewhere. Moreover, long-time residents are generally more familiar with local problems and concerns and are therefore more capable employees than those who grew up elsewhere. Statutes of the type involved herein serve these purposes.

The result reached by the Ninth Circuit Court of Appeals, however, casts into doubt any such effort by the Government of Guam. The court's opinion effectively bars Guam from providing similar incentives and benefits to their residents, not only in this case, but in any situation in which the benefits are open to Guam residents alone. This may leave Guam powerless

to provide such incentives or, at the very least, places the Government in a quandary as to what programs might be constitutional. Clearly, the matter is of great importance to the Territory of Guam as a whole and deserves the Court's consideration. Puerto Rico v. Rubert Co., 309 U.S. 543, 544 (1940) (writ granted where "matter of great importance to Puerto Rico").

II

THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS MISAPPLIES THIS COURT'S DECISIONS IN ZOBEL V. WILLIAMS, 457 U.S. 55 (1982), AND HOOPER V. BERNALILLO COUNTY ASSESSOR, 53 U.S.L W. 4827 (June 24, 1985).

The opinion of the Court of Appeals relied heavily on two decisions of this Court, Zobel v. Williams, supra, and Hooper v. Bernalillo County Assessor, supra. In Zobel, this Court found unconstitutional a statutory scheme by which the State of Alaska distributed income from its natural resources to the adult citizens of the state in varying amounts, based on the length of each

citizen's residence. The State argued that the distinctions drawn under the plan were designed to recognize various past contributions of the residents, but this Court ruled that such an objective was not a legitimate state interest.

In Hooper, a New Mexico statute provided a $2000 property tax exemption for veterans of the Vietnam War, but the exemption was limited to veterans who were residents of New Mexico before May 8, 1976. The State claimed that the exemption encouraged veterans to settle in New Mexico and also served as an expression of gratitude to its citizens. The Court acknowledged that a state may legitimately reward military veterans for their service but ruled that the exemption did not serve this purpose since the statute arbitrarily distinguished between veterans who were residents before May 8, 1976 and those who became residents thereafter. The Court therefore concluded that the exemption was actually a reward for past contributions by residents and therefore

failed under Zobel.

The court below applied these two cases even though there are substantial differences between these cases and the instant one. In this case, the extra retirement credits available under the statute serve not only to reward those who have already satisfied the statutory requirements when the statute was enacted, but it also provides an incentive for Guam residents who pursue higher education outside of Guam to return to Guam and enter or continue government employment after completing such higher education. Moreover, unlike the arbitrary dates set in Zobel and Hooper, the Guam statute provides the benefit to people who were residents at the time they began their undergraduate studies. This point in time is significant since the statute provides incentive to Guam residents to further their education and to then return to government employment in Guam. This purpose is not served if the statute is applied to those who have become residents only after receiving their education.

The retrospective application of this statute is limited to those individuals who would have satisfied the statute if it had been in effect at the time they started their undergraduate studies. Thus, the retrospective application merely serves to create equitable treatment between those who started their studies before the enactment of the statute and those who started after that date. This is only logical since all of these residents, by returning to Guam and entering government service, risked the same potential hardship of missing more lucrative employment outside of Guam, regardless of when they started their studies. By the same token, the exclusion of those such as Respondent is consistent with this purpose since neither the Respondent nor those similarly situated would have qualified under the statute regardless of when it was enacted. The Respondent and those in his position did not risk the same potential hardship as did those who have qualified under the statute. In the same way, those who have never resided in

Guam before but enter government service there now with full knowledge of § 8113 have not incurred the same potential hardship as have those who were residents of Guam after the enactment date, left Guam for higher education and then returned to Guam to enter government service. The only difference between the current application of § 8113 and its retrospective application is that those affected by the provision's retrospective application had no knowledge of their future eligibility (or lack thereof) at the time they entered Guam government service. Such difference in knowledge is irrelevant to the conclusion that, whether § 8113 is currently or retrospectively applied, Guam has a rational basis for not awarding extra pension credit to those who were not residents of Guam at the time they commenced their undergraduate studies. Guam's desires to both reward those who qualified prior to the enactment of § 8113 (retrospective application) and to encourage those who are eligible to

receive the added benefits if they return to Guam and enter government service (current application) represent the means to fulfill a legitimate government purpose: the recognition of past potential sacrifice and the encouragement of future potential sacrifice which has resulted and will result in the employment of better qualified people for Guam government service.

The court below also misapplied Hooper in a second respect. In Hooper, this Court acknowledged that rewarding a veteran for past contributions is "plainly legitimate," but added that rewards must be distributed according to a rational standard. 53 U.S.L.W. at 4829-30. The rationale for granting such rewards is grounded on a 'desire to compensate in some measure for the disruption of a way of life . . . and to express gratitude . . . .'" Id. at 4830 (quoting Russell v. Hodges, 470 F.2d 212, 218 (2d Cir. 1972)). Thus, this Court in Hooper has accepted the very same rational basis for the retrospective application

of § 8113 which is being asserted by the Petitioners here. Again, the valid distinction by which this recognized rational basis is served only when § 8113 is retrospectively applied to those who were residents of Guam when they began their higher education and not to those in the Respondent's position must be emphasized. Because of Guam's unusual situation, a decision to seek higher education may entail a substantial disruption of the individual's way of life. Moreover, a decision to return to Guam after receiving that education and to work for the government of Guam may, as mentioned, also constitute a sacrifice. On the other hand, this reasoning does not apply to those who were residents elsewhere when they started their undergraduate studies, since it is unlikely that their lives were disrupted to the same degree. Additionally, a resident of Guam is more likely to return to Guam for altruistic reasons than is someone who never lived there before.

Accordingly, in the instant case, like the veteran's preference cases, the government is compensating the employees for the disruption of their lives and is expressing its gratitude. Unlike Hooper, however, there is a rational distinction between those who were entitled to the extra benefits and those who were not. Since the court of appeals failed to acknowledge these differences, it has misapplied Hooper and Zobel.

The third principal case discussed by the court below, Soto-Lopez v. New York City Civil Service Commission, 755 F.2d 266 (2d Cir.), review granted, No. 84-1803, 534 U.S.L.W. 3903 (July 1, 1985) cannot be relied upon to preclude the distinction made under § 8113 for the same reason that Hooper cannot be so relied upon. In Soto-Lopez, the plaintiffs challenged a distinction made under N.Y. Civil Serv. Law § 85, by which a New York resident who was a veteran of the armed forces and passes a civil service examination, would receive extra points if he had been a New

York resident at the time he entered the armed forces. The court could find no legitimate state purpose served by the exclusion of those veterans who were not New York residents at the time of their entry into the armed services. The court could find no distinction between the benefit the state received from the national military service of one who was a New York resident at the time of induction and one who was not. Again, the validity of the distinction made under the present facts by § 8113 is clear. Those who were residents of Guam at the commencement of their undergraduate studies abroad, potentially made a sacrifice by returning to Guam and entering government service, a sacrifice which those who became residents of Guam for the first time upon entering government service most likely did not make. Additionally, the Government of Guam could reasonably believe that it benefitted more substantially from the return of former residents for the purpose of entering government service than it did from the hiring of those who

had not been residents of Guam at the beginning of their higher education. It was in recognition of this greater sacrifice for the individual and greater benefit to Guam, that § 8113 was drafted to apply retrospectively only to those who potentially made the sacrifice and bestowed the benefit.

CONCLUSION

It is clear that the decision made by the court below under the present facts is inconsistent with the decisions of this Court in Zobel and Hooper and with the decision of the Second Circuit Court of Appeals in Soto-Lopez. It seems evident that the court below has followed the recent trend of invalidating classifications based upon residency without sufficiently considering the distinctions which exist under the present facts. This court should address this problem in order to ensure that federal court decisions are consistent with prior decisions of this Court. First National Bank of Arizona v. Cities Service

Co., 391 U.S. 253, 259 (1968); National Labor Relations Board v. Great Dane Trailers, 388 U.S. 26, 31 (1967); Radiant Burners, Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 656, 659 (1961).

WHEREFORE, Petitioners respectfully pray that a Writ of Certiorari be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three(3) copies of the foregoing Petition for Writ of Certiorari filed on behalf of Petitioners Luis M. Camacho, Don C. Warner, Bertha L. Duenas, Frank C. Cruz, and Jesus B. Paulino were duly served upon Respondent William K. Bunyan by placing same in the United States Mail first class postage pre-paid, certified return receipt requested, addressed to:

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WILLIAM K. BUNYAN, Plaintiff-Appellant, vs. LUIS M. CAMACHO, DON C. WARNER, BERTHA L. DUENAS, FRANK C. CRUZ and JESUS B. PAULING, Defendants-Appellees.	)	C.A. No. 84-2766 D.C. No. CV-84-0028 OPINION

On Appeal From the United States
District Court for the
District of Guam
The Honorable Cristobal C. Duenas,
District Judge, Presiding

Argued and Submitted June 13, 1985,
San Francisco, California

Before: SNEED, BEEZER, Circuit Judges,
and RAFEEDIE,* District Judge.

BEEZER, Circuit Judge:

This is an appeal from a summary judgment upholding the constitutionality of a Guam statute that grants retroactive retirement credit to

*The Honorable Edward Rafeedie, United States District Judge, Central District of California, sitting by designation.

local government employees who were Guam residents before they started college. Appellant challenges the district court's holding that the statute is rationally related to a legitimate governmental purpose. We reverse.

FACTS

In 1978, the Guam Legislature enacted the following statute:

> Any bona fide resident of Guam, who receives his graduate or undergraduate degree from an accredited institution and is employed by the government of Guam, after obtaining such degree, may claim retirement credit equal to the period of time, including vacations, which a full-time student would normally take to complete the program leading to the degree he received, . . . by paying to the Fund the appropriate member's and employer's shares . . .; provided, however, that this Section shall apply only to those persons:
>
> (a) who received their degrees after June 1, 1945;
>
> (b) who were bona fide residents of Guam at the time they began their undergraduate studies; and
>
> (c) who had been employed by the Government for at least ten (10) years as full-time, locally hired employees.

4 Guam Code Ann. § 8113. Appellant William Bunyan, a high school science teacher who moved

to Guam in 1963 after he had already finished college, meets all the statutory requirements for obtaining retroactive retirement credit except that he was not a Guam resident at the time he began his undergraduate studies. He was therefore denied such credit.

Appellant brought a civil rights action against appellees, the members of the Board of Trustees for the Government of Guam Retirement Fund. 42 U.S.C. § 1983. The complaint alleged that subsection (b) of the statute violates the Equal Protection Clause of the U.S. Constitution, and requested declaratory and injunctive relief. The district court granted summary judgment in favor of appellees, holding that the retrospective application of the statute to persons already employed by the local government was rationally related to the legitimate governmental purpose of

> express[ing] the gratitude of the Territory of Guam by conferring benefits to those Guamanian residents who enrolled in college, received an undergraduate or graduate degree, and returned to the Territory of Guam with their specialized

> knowledge, skill, and training to work for the Government of Guam, prior to the enactment of this statute.

Bunyan appeals.

ANALYSIS

The sole issue on appeal is whether the district court erred in holding that section 8113(b) is rationally related to a legitimate governmental purpose.

We may affirm the district court's order for summary judgment if, viewing the record in the light most favorable to appellant, there was no genuine issue of material fact and the appellees were entitled to judgment as a matter of law. State of Alaska v. United States, 754 F.2d 851, 853 (9th Cir. 1985). We review the order de novo. Id.

Absent a suspect classification or the infringement of a fundamental right, neither of which is alleged to exist here, the equal protection clause is offended only if the statute's different treatment of the two classes of local

government employees bears no rational relationship to a legitimate governmental purpose. See San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 40 (1973); Parks v. Watson, 716 F.2d 646, 654 (9th Cir. 1983). We may hypothesize the possible legislative purposes for enacting the statute, and must uphold it if any legitimate purpose is served. In re Lara, 731 F.2d 1455, 1460 & n.7 (9th Cir. 1984); Brandwein v. California Bd. of Osteopathic Examiners, 708 F.2d 1466, 1470-71 (9th Cir. 1983); Lamb v. Scripps College, 627 F.2d 1015, 1021 n.9 (9th Cir. 1980).

The district court granted summary judgment solely on the basis of Devereaux v. New York State Teachers' Retirement Board, 75 A.D.2d 277, 429 N.Y.S.2d 743, appeal denied, 51 N.Y.2d 705 (1980). That case upheld a New York statute that gave teachers retroactive retirement credit for military service provided they were New York residents at the time they began and ended such service. An intermediate

state appellate court found that

> the classification is substantially related to the object of the statute, which was the desire of the State of New York to express its gratitude to its sons who entered their country's service in time of war by conferring certain benefits to them to compensate them for the disruption of their way of life and, in many cases, of their employment by service in the armed forces.

429 N.Y.S.2d at 747. See also Regan v. Taxation with Representation of Washington, 461 U.S. 540, 551 (1983) ("Our country has a longstanding policy of compensating veterans for their past contributions by providing them with numerous advantages. This policy has 'always been deemed to be legitimate.'"); Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 265 (1979).

Although rewarding veterans for their past military service is a legitimate state purpose, the trend of recent decisions is to restrict both the types of past contributions that may be legitimately rewarded and the bases for distinguishing between favored and disfavored

classes.

In Zobel v. Williams, 457 U.S. 55 (1982), for example, the Supreme Court held that giving long-term residents larger cash dividends than newer residents as a reward for "contributions of various kinds, both tangible and intangible, which residents have made during their years of residency," was not a legitimate state purpose. 457 U.S. at 61, 63. Similarly, the Court has held that a state may not apportion welfare benefits according to the past tax contributions of applicants. Shapiro v. Thompson, 394 U.S. 618, 632-33 (1969). In fact, the parties have not cited a single case upholding rewards for past contributions other than military service.

Moreover, even if Guam has a legitimate interest in rewarding the past conduct addressed by the statute, two cases decided after the district court's ruling cast considerable doubt on the constitutionality of rewarding only those persons who were residents before engaging in the favored activity. In Soto-Lopez v. New

York City Civil Service Commission, 755 F.2d 266 (2d Cir.), review granted, 534 U.S.L.W. 3903 (U.S. July 1, 1985) (No. 84-1803), the Second Circuit considered a law which gave veterans who were New York residents at the time of their induction into the military extra preference points on their civil service examinations. The court held that rewarding or otherwise favoring only prior state residents for performing military service is not a legitimate state purpose, and that distinguishing between veterans who were residents at the time of their induction and those who were not is not rationally related even to admittedly legitimate state purposes. 755 F.2d at 268, 272, 274, 276-78.

Similarly, in Hooper v. Bernalillo County Assessor, 53 U.S.L.W. 4827 (U.S. June 24, 1985), the Supreme Court struck down a statute that granted a partial property tax exemption to Vietnam veterans who were state residents before May 8, 1976. The Court noted that the statute

"creates 'fixed, permanent distinctions between . . . classes of concededly bona fide residents' based on when they arrived in the State," 53 U.S.L.W. at 4829, and held that the classification did not bear a rational relationship to a legitimate state purpose. The Court reasoned that rewarding only prior or established residents for past military service is not a legitimate state purpose, and that such a distinction does not bear a rational relationship to the legitimate purpose of compensating all resident veterans for the sacrifices inherent in wartime military service. 53 U.S.L.W. at 4830. Moreover, although the Court expressly declined to consider the constitutionality of veterans' benefit statutes that condition eligibility on state residence at the time of induction into the military, it strongly implied that such statutes may also be unconstitutional in light of Zobel. See Hooper, 53 U.S.L.W. at 4830 n.11.

The statute in the case at bar also creates "fixed, permanent distinctions between

. . . classes of concededly bona fide residents." Zobel, 457 U.S. at 59. Even if Guam may legitimately decide to reward its residents who obtained a higher education and entered the Guamanian civil service, rewarding only "established" residents for such past conduct is not a legitimate purpose.[1/] See Hooper, 53 U.S.L.W. at 4830. Furthermore, the statute's distinction between different classes of resident civil servants with college degrees is not rationally related to the asserted goal of

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1/ Appellees assert that two other interests are served by the statute. The first, attracting to the Guamanian civil service persons who are well-educated, are familiar with local problems, or are committed to the future of Guam, fails because the statute does not rationally distinguish between more and less educated residents, between long-term and newer residents, or between committed and uncommitted residents. The second, the state's interest in limiting retroactive retirement benefits to those who have contributed more to the publicly-funded portion of the retirement plan through their taxes, was expressly held to be an illegitimate state purpose in Shapiro and Zobel.

rewarding, encouraging and compensating persons for the alleged sacrifices. We therefore hold that 4 Guam Code Ann. § 8113(b) violates the Equal Protection Clause.

The summary judgment is REVERSED and the case remanded for proceedings consistent with this opinion.

APPENDIX B

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

WILLIAM K. BUNYAN, Plaintiff, vs. LUIS M. CAMACHO, DON C. WARNER, BERTHA L. DUENAS, FRANK C. CRUZ, and JESUS B. PAULINO, Defendants.	CIVIL CASE NO. 84-0028 MEMORANDUM ORDER

The facts are undisputed. Plaintiff William K. Bunyan obtained his Bachelor of Science degree from Kansas State College in 1958 and his Master of Science degree from Kansas State University in 1959. At the commencement of his studies for both his Bachelor and Master degrees he was a resident of the State of Kansas. In 1963, Plaintiff was employed by the Department of Education, Government of Guam, as a contract hire teacher. For at least the past 12 years the Plaintiff has been employed by the Government of Guam as a full-time, locally hired teacher. He is

currently teaching at George Washington High School in the Territory of Guam.

On June 7, 1984, the Plaintiff filed a complaint against the Defendants seeking a declaratory judgment that the actions of the Defendants pursuant to § 8113(b) of 4 Guam Code Annotated, prohibiting the Plaintiff from obtaining retirement credit for his undergraduate and graduate education on the grounds that he was not a resident of Guam when he started his studies, are illegal and unconstitutional as violative of the Equal Protection Clause of the United States Constitution as it is applied to Guam in Title 48 United States Code, § 1421b(n) and § 1421b(u). The Plaintiff also sought injunctive relief restraining the Defendants from enforcing or applying § 8113(b) to the Plaintiff.

On August 27, 1984, the Plaintiff filed a motion for summary judgment, and on September 14, 1984, the Defendants filed a cross-motion

for summary judgment. A hearing on both motions was held on September 20, 1984, and the court took the matter under advisement.

The sole issue before this Court is whether the retroactive application of § 8113 of Title 4 of Guam Code Annotated is violative of the Equal Protection Clause of the United States Constitution which provides:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the Several States". [Art. IV, Section 2, Clause 1 of the U.S. Const. applicable to Guam under Title 48 USC § 1421b(n) and § 1421b(u).]

The Plaintiff contends that § 8113(b) imposes an unconstitutional residency requirement on the obtainment of educational retirement service credit. Section 8113 of Title 4 Guam Code Annotated states as follows:

> "§ 8113. Same: Credit for Education. Any bona fide resident of Guam, who receives his graduate or undergraduate degree from an accredited institution and is employed by the government of Guam after obtaining such degree, may

> claim retirement credit equal to the period of time, including vacations, which a full-time student would normally take to complete the program leading to the degree he received, or any lesser period he may elect to claim, by paying to the Fund the appropriate member's and employer's shares based on the period of credit sought to be obtained and his salary when he begins employment with the government of Guam; provided, however, that this Section shall apply only to those persons:
>
> (a) who received their degrees after June 1, 1945;
> (b) who were bona fide residents of Guam at the time they began their undergraduate studies; and
> (c) who had been employed by the Government for at least ten (years) as full-time, locally hired employees."

It is clear to this Court that the benefits conferred by the statute do not infringe or penalize the fundamental right to travel. Devereaux v. New York State Teachers' Retirement Board, 429 N.Y.S. 2d 743, 747 (App. Div., 1980). Thus, there is no need to strictly scrutinize the statute and find a compelling territorial interest to justify the constitutionality of § 8113(b).

The residency requirement under Subsection (b) of § 8113 is not per se unconstitutional

since it is not a durational residency requirement. And, the classification created by such residency requirement can be upheld as long as it is reasonably related to the purpose or object of the statute. Devereaux, Id at 747. The Plaintiff contends that the only purpose of the statute is to encourage Guam residents to attend college and return to the Territory of Guam to work for the Government of Guam. Thus, he argues that the statute is inapplicable when applied retrospectively because it cannot provide incentive to those who have already completed college and are employed by the Government of Guam. This Court would have to agree with the Plaintiff if that were the only purpose of the statute, however, the legislature of Guam has explicitly stated that this statute is to be applied retroactively. In other words, the legislature has demonstrated that the statute has a dual purpose. Not only does § 8113 provide incentive to Guam residents to obtain a college

degree and return to Guam to work for the Government of Guam, but it also expresses the gratitude of the Territory of Guam by conferring benefits to those Guamanian residents who enrolled in college, received an undergraduate or graduate degree, and returned to the Territory of Guam with their specialized knowledge, skill, and training to work for the Government of Guam, prior to the enactment of this statute.

The statute in the case at bar is very similar to the New York statute [§ 503(10) of the Education Laws of New York] in the Devereaux case, Id., whereby the State of New York granted military service credit for active duty in the armed forces of the United States to a full-time teacher who joined the retirement system prior to July 1, 1973, and was a resident of New York State at the time of entry into such service and at the time of discharge therefrom. The residency requirement of this New York statute was challenged by a retired New York teacher claiming credit for military

services rendered during World War II while a resident of New Jersey. The court in upholding the statute stated as follows:

> "The residency requirement of subdivision 10 of section 503 of the Education Law does not contain a durational disability, and the classification is substantially related to the object of the statute, which was the desire of the State of New York to express its gratitude to its sons who entered their country's service in time of war by conferring certain benefits to them to compensate them for the disruption of their way of life and, in many cases, of their employment by service in the armed forces." Devereaux, Id.

It is the decision of this Court that the classification created by the residency requirement contained in § 8113(b) is reasonably related to the purpose or object of the statute at issue and is not violative of the Equal Protection Clause of the United States Constitution.

The Plaintiff's motion for Summary Judgment is hereby denied and the Defendants' cross motion for Summary Judgment is hereby

granted.

IT IS SO ORDERED.

Dated this 23rd day of October, 1984.

/s/ Cristobal C. Duenas
CRISTOBAL C. DUENAS
Judge, District Court of
Guam

FILED
DEC 23 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

No. 85-873

WILLIAM K. BUNYAN,

Respondent,

-against-

LUIS M. CAMACHO, DON C. WARNER, BERTHA L. DUENAS, FRANK C. CRUZ, and JESUS B. PAULINO,

Petitioners.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT WILLIAM K. BUNYAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Table of Authorities i

Statement of the Case 1

The Parties 1

The Facts 2

Prior Proceedings 4

Reasons for Denying the Writ 6

1. A Government May Not Legitimately Attempt to Limit Its Expenditures By Discriminating Between Classes of Its Own Citizen 7

2. The Retrospective Discrimination of §8113(b) Does Not Operate As An Incentive for People Who Are Already Working for the Government of Guam 8

3. Long-Term Residents Are Not Better Citizens 9

4. The United States Court of Appeals for the Ninth Circuit Did Not Misapply the Holdings in Zobel and Hooper 11

CONCLUSION 13

TABLE OF AUTHORITIES

Hooper v. Bernalillo County Assessor, 53 U.S.L.W. 4827 (U.S. June 24, 1985) 11

Shapiro v. Thompson, 89 S. Ct. 1322, 1330 (1969) 8

Zobel v. Williams, 102 S. Ct. 2309 (1982) 11, 12, 13

IN THE
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No. 85-873

WILLIAM K. BUNYAN,

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-against-

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ON PETITION FOR WRIT OF CERTIORARI
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BRIEF FOR RESPONDENT WILLIAM K. BUNYAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

1. THE PARTIES

Plaintiff/Respondent is a teacher in the Territory of Guam. Defendants/

Petitioners are on the Board of Directors of the Guam Retirement Fund.

2. **THE FACTS**

Plaintiff obtained his Bachelor of Science from Kansas State College in 1958 and his Master of Science from Kansas State University in 1959. At the time Plaintiff started his studies for his Bachelor of Science and his Master of Science, Plaintiff was a resident of the State of Kansas.

Plaintiff started working as a teacher for the Government of Guam in the Department of Education in 1963. Plaintiff is presently a science teacher at George Washington High School in the Territory of Guam.

In 1978, the Guam Legislature enacted §8113(b), Government Code Annotated. Section 8113(b) gives a retirement credit

to Government of Guam employees if, and only if, they were residents of Guam when they started college.

Section 8113(b) applies both prospectively and retrospectively. The statute's retrospective application distinguishes between two classes of present Guam residents that began working for the Government of Guam before 1978. One class of present Government of Guam employees resided in Guam when they started college. Section 8113(b) operates retrospectively to give this class a retirement credit. One class of present Government of Guam employees did not reside in Guam when they started college. Section 8113(b) denies this class a retirement credit. Plaintiff is in the latter class.

On June 7, 1984, Plaintiff filed suit in the District Court of the Territory of Guam, contending that the retrospective discrimination of §8113(b) is violative of the Equal Protection Clause of the United States Constitution.

3. **PRIOR PROCEEDINGS**

In his complaint filed in the District Court of the Territory of Guam, on June 7, 1984, Plaintiff alleged that the retrospective discrimination of §8113(b) was in violation of the Equal Protection Clause of the United States Constitution as it applied to Guam in Title 48, United States Code §§1421b(n) and 1421b(u). Plaintiff requested that the retrospective discrimination of §8113(b) be declared unconstitutional and that Defendants be enjoined from enforcing §8113(b).

On August 27, 1984, Plaintiff filed a motion for summary judgment. Plaintiff moved for summary judgment on the grounds that this statute was unconstitutional because it did not advance a compelling state interest and did not withstand scrutiny under the rational basis test.

On September 14, 1984, Defendants filed their cross-motion for summary judgment. Defendants advanced numerous arguments and cited numerous cases in support of their cross-motion for summary judgment.

The matter came before the District Court of Guam on September 21, 1984. Plaintiff testified at the hearing.

On October 23, 1984, the District Court of Guam issued its Memorandum Order. In its Memorandum Order the District Court concluded that there existed no material issues of fact in dispute and that

Defendants were entitled to summary judgment as a matter of law. The District Court accordingly ordered judgment to be entered in favor of all Defendants. This judgment was entered on November 16, 1984.

Plaintiff appealed from the final judgment entered on November 16, 1984. This notice of appeal was timely filed on November 20, 1984.

On September 4, 1985, the United States Court of Appeals for the Ninth Circuit issued its Opinion in the case and reversed the decision of the District Court of the Territory of Guam. Defendants have now filed a petition for certiorari in the Supreme Court of the United States.

REASONS FOR DENYING THE WRIT

Defendants have advanced four arguments in support of their Writ. Each of these

arguments is erroneous and the Writ should be denied.

1. A Government May Not Legitimately Attempt tc Limit Its Expenditures By Discriminating Between Classes of Its Own Citizens.

Defendants contend that the holding of the United States Court of Appeals for the Ninth Circuit can "potentially allow large numbers of previously unqualified individuals to purchase additional retirement credit" and that such "a situation would impose additional liabilities on the fund for which it is ill-prepared." Pet. at 6. There is nothing in the factual record to support this argument but, assuming that this economic argument has any validity whatsoever, a state may not legitimately attempt to limit its expenditures by discriminating between classes of its own citizens.

> We recognize that a state has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a state may not accomplish such a purpose by invidious distinctions between classes of its own citizens. Shapiro v. Thompson, 89 S.Ct. 1322, 1330 (1969).

2. The Retrospective Discrimination of §8113(b) Does Not Operate As An Incentive For People Who Are Already Working For the Government of Guam

Defendants argue that "the Government of Guam wants to encourage its residents to seek higher education and then return to Guam and enter public employment once they have done so" and that statutes such as §8113(b) "serve these purposes." Pet. at 7. Assuming that §8113(b) does serve as an incentive for Guam residents to return to Guam after they have obtained their education, this particular statute

could not possibly serve as such an incentive when applied retrospectively. The people who were working for the Government of Guam (such as Plaintiff), when §8113(b) was enacted, had already returned to the Territory of Guam and were already working for the Government of Guam. Also, even as to the prospective application of §8113(b), there is no reason why the Government of Guam should encourage former Guam residents to work for the Government of Guam to the exclusion of other citizens of the United States who were not residing in Guam when they started college.

3. Long-Term Residents Are Not Better Citizens.

Defendants submit that "long-term residents are generally more familiar with local problems and concerns and are

therefore, more capable employees than those who grew up elsewhere." Pet. at 7. Two points must be made about this particular contention. First, this contention cannot justify the retrospective discrimination of §8113(b). Respondent has lived in the Territory of Guam since the early 1960s, and it is hard to argue that he is not familiar with local problems and concerns. Second, if permitted, Defendants' argument would allow and encourage the States to retreat into ethnocentrism by granting long-term residents special privileges and benefits, simply because these long-term residents are allegedly "more familiar" with local problems and concerns. This type of social behavior should not be allowed in any modern industrial society which by its very nature must depend on the mobility of its citizens.

4. The United States Court of Appeals for the Ninth Circuit Did Not Misapply the Holdings in Zobel and Hooper.

In Zobel v. Williams, 102 S. Ct. 2309 (1982) and Hooper v. Bernalillo County Assessor, 53 U.S. L.W. 4827 (U.S. June 24, 1985), the Supreme Court of the United States addressed factual situations wherein certain states attempted to bestow benefits on long-term residents. The United States Court of Appeals for the Ninth Circuit relied upon the holdings in Zobel and Hooper, and determined that the retrospective discrimination of §8113(b) was in violation of the Equal Protection Clause of the United States Constitution.

The holding of the United States Court of Appeals for the Ninth Circuit in this action is in accord with the reasoning in Zobel and Hooper. This reasoning

is most clearly stated by the concurring Justices in Zobel.

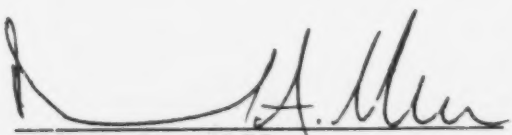
> The Fourteenth Amendment guarantees the equal protection of the law to anyone who may be within the territorial jurisdiction of a State. That amendment does not suggest by its terms that equal treatment might be denied a person depending upon how long that person has been within this jurisdiction of the state. The Fourteenth Amendment does, however, expressly recognize one elementary basis for distinguishing between persons who may be within a state jurisdiction at any particular time by setting forth the requirement for state citizenship. But it is significant that the citizenship clause of the Fourteenth Amendment expressly equates citizenship only with simple residence. That clause does not provide for, and does not allow for, degrees of citizenship based on length of residence. And the Equal Protection Clause would not tolerate such distinctions. In short, as much as the right to travel, the quality of citizenship is of the essence in our republic. As the Court notes, states may not "divide

citizens into expanding numbers of permanent classes." Zobel, 72 L. Ed. 2d at 683-684.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectively submitted,



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F I L E D
JAN 16 1986
JOSEPH F. SPANIOL,
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No. 85-873

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

LUIS M. CAMACHO, DON C. WARNER, BERTHA L. DUENAS, FRANK C. CRUZ, and JESUS B. PAULINO,

Petitioners

v.

WILLIAM K. BUNYAN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

Table of Authorities ii

Statement of the Case

Petitioners accept Respondent's Statement of the Case as presented in his Brief In Opposition. In accordance with Supreme Court Rule 34.2, a Statement of the Case is therefore omitted here.

Constitutional and Statutory Provisions Involved 1

Argument

I. Fiscal importance has been recognized by this Court as a basis for granting certiorari 3

II. The retrospective application of § 8113(b) is supported by a rational basis other than the legislature's desire to create an incentive for its citizens to return to Guam. . 5

III. The situations in Zobel and Hooper are distinguishable from the present facts 12

CONCLUSION 16

TABLE OF AUTHORITIES

Cases	Page
Brandwein v. California of Osteopathic Examiners, 708 F.2d 1466 (9th Cir. 1983)	9
Hooper v. Bernalillo County Assessor, 53 U.S.L.W. 4827 (U.S. June 24, 1985)	6,12 14,15
Personnel Administrator of Mass. v. Feeney, 442 U.S. 256 (1979)	6
Regan v. Taxation w. n Representation of Wash., 461 U.S. 540 (1983)	6
Shapiro v. Thompson, 394 U.S. 618 (1969)	13
Territory of Alaska v. American Can Co., 358 U.S. 224 (1959)	4
Zobel v. Williams, 457 U.S. 55 (1982)	12,15
Constitutional Provisions	
Equal protection clause of the fourteenth amendment to the United States Constitution	6,10
Statute	
Guam Gov't Code title IV, § 8113	passim

CONSTITUIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amendment 14 (applicable part):

> No state shall . . . deny any person within its jurisdiction the equal protection of the laws.

Guam Gov't Code Title IV, § 8113:

Any bona fide resident of Guam, who receives his graduate of undergraduate degree from an accredited institution and is employed by the government of Guam after obtaining such degree, may claim retirement credit equal to the period of time, including vacations, which a full-time student would normally take to complete the program leading to the degree he received, or any lesser period he may elect to claim, by paying to the Fund the appropriate member's and employer's shares based on the period of credit sought to be obtained and his salary when he begins employment with the government

of Guam; provided, however, that this Section shall apply only to those persons:

(a) who received their degrees after June 1, 1945;

(b) who were bona fide residents of Guam at the time they began their undergraduate studies; and

(c) who had been employed by the Government for at least ten (10) years as full-time, locally hired employees.

ARGUMENT

I.

FISCAL IMPORTANCE HAS BEEN RECOGNIZED BY THIS COURT AS A BASIS FOR GRANTING CERTIORARI.

The Respondent argues that the retrospective application of Guam Gov't Code § 8113(b), which limits the added retirement credit to those who were residents of Guam when they began their college education, is unconstitutional because "A government may not legitimately attempt to limit its expenditures by discriminating between classes of its own citizens" (Respondent's Brief in Opposition, Section 1 at 7). Petitioners agree that the need to limit expenditures cannot justify discrimination. However, this is completely unrelated to the point that Petitioners wish to make. Petitioners merely assert that because there is a potential under the Circuit Court's decision for an increase

in expenditure to the point that the retirement credit program might be dropped, the issue is of such importance to the Territory of Guam that this Court should grant the writ of certiorari. Petitioners are not arguing that the Government of Guam's desire to limit its expenditures justifies any exercise of unconstitutional discrimination between the classes of its citizens. Rather, Petitioners assert that because a significant financial burden is at stake here, the importance of the issue is so great that this Court should grant the writ in order to decide if the discrimination in question is indeed unconstitutional.

Fiscal importance has been explicitly recognized by this Court as a basis for granting certiorari. In Territory of Alaska v. American Can Co., 358 U.S. 224 (1959), the

issue was whether Alaska's right to collect past amounts due on a general property tax survived the repeal of the tax.

> The case is here by a petition for writ of certiorari which was granted in view of the fiscal importance of the question to Alaska. 356 U.S. 926, 78 S.Ct. 717, 2 L.Ed.2d 758.

Id. at 225.

II.

THE RETROSPECTIVE APPLICATION OF § 8113(b) IS SUPPORTED BY A RATIONAL BASIS OTHER THAN THE LEGISLATURE'S DESIRE TO CREATE AN INCENTIVE FOR ITS CITIZENS TO RETURN TO GUAM.

It is admitted by Petitioners that the selective retrospective application of § 8113(b) cannot very well encourage the return to Guam of one who was already residing there and had satisfied all of the requirements of § 8113, except that of § 8113(b), at the time of the provision's enactment. While the "incentive

to return" element cannot justify the retrospective application of § 8113, an alternative rational basis provides the support necessary to satisfy the equal protection clause of the fourteenth amendment to the U.S. Constitution. A state or territorial government has a perfect right to recognize and reward the contributions made or hardships suffered (or potentially suffered) by a limited segment of its citizenry. The most frequent examples of such rewards are those established by the states for war veterans. The general validity of such rewards has been clearly recognized. Regan v. Taxation With Representation of Wash., 461 U.S. 540 (1983); Personnel Administrator of Mass. v. Feeney, 442 U.S. 256 (1979). Hooper v. Bernalillo County Assessor, 53 U.S.L.W. 4827 (U.S. June 24, 1985), one of the cases relied upon by

Respondent and discussed more fully, infra, implicitly recognizes the right of a state or territory to reward a limited portion of its population. Before discussing the direct connection between this rational basis and the retrospective application of § 8113(b), another point raised by the Respondent must be answered.

The Respondent (Brief in Opposition, § 3 at 9-10) calls into question the validity of the prospective application § 8113(b), which limits the reward of the added retirement credit to those who resided in Guam when they began their college education. The Respondent challenges the justification for favoring this sub-group of Guam citizens that is based on the greater familiarity of long-term residents with local problems and concerns and the resultant expectation that they would be more valuable government employees. This

challenge confuses matters because only the retrospective application of § 8113(b) is in question here; the prospective application of the general scheme of § 8113 is not at issue. It may be noted, however, that under the rational basis or relation test, the response to the Respondent's general challenge is that the Guam legislature's belief that those who were residents of Guam before they left for their college studies would tend to make superior government employees is not beyond reason.

> The plaintiff in a challenge to a legislative classification, reviewed under this [the rational basis] standard, must prove that the facts on which the legislature may have relied in shaping the classification "could not reasonably be conceived to be true by the governmental decisionmaker." Vance v. Bradley, 440 U.S. at 111, 99 S.Ct. at 949. "The admission that facts are arguable" is enough to justify the legislative judgment. Id. at 112,

99 S.Ct. at 950.

Brandwein v. California Board of Osteopathic Examiners, 708 F.2d 1466, 1470-71 (9th Cir. 1983).

As to the retrospective application of § 8113(b), the Respondent claims that because of his long-term residency on Guam, such application is unjustified in his case. This assertion entirely begs the question. As mentioned, supra, the purpose of applying § 8113(b) retrospectively is to reward those who complied with the terms of the provisions, thereby making a contribution and enduring a hardship that other citizens did not. The Respondent's long-term residency on Guam after the completion of his education has no relation to the purpose of § 8113(b). It may well be true that a person, such as the Respondent, who has lived and worked on Guam for an extended period after his

education has been completed will become as familiar with local problems as one who had been a resident of Guam prior to entering college and then returned to Guam. The Government of Guam may well regard a "post-education" long-term resident, such as the Respondent, as having the potential of being as valuable an employee as one whose residency on Guam began prior to college. However, the Government of Guam has chosen to reward only those meeting the latter requirement, bona fide residency on Guam at the time of starting undergraduate studies. The limitation of the reward to this group and its denial to those in the Respondent's position is, like the government's desire to attract such people back to Guam, supported by a rational basis that satisfies the equal protection clause. Those who have left Guam for

their college education and then have returned for government service have at least potentially suffered a hardship that a person who simply decides to work in Guam as a first-time resident has not. The Guam returnee is more likely to have decided to work for the Government of Guam for altruistic reasons such as loyalty to the place of his prior residency, if not birth, than would be true of a first-time resident. The Guam returnee, having received his education outside of Guam over a period of several years, is likely to have spurned more lucrative opportunities elsewhere. At least the Government of Guam, under the rational basis test, is entitled to view the returnee in this light if it so chooses.

III.

THE SITUATIONS IN ZOBEL AND HOOPER ARE DISTINGUISHABLE FROM THE PRESENT FACTS.

Zobel v. Williams, 457 U.S. 55 (1982) and Hooper v. Bernalillo County Assessor, supra, are not applicable to the present situation. These cases are more fully discussed in Petition at 8 et seq., but both involved residency requirements. In Zobel, the longer the citizen was a resident of Alaska, the greater the amount of his dividend under the state's scheme for distributing profits from natural resources. In Hooper, Vietnam War era veterans were exempt from property tax on $2,000 worth or realty, but only if they had been residents of New Mexico prior to May 8, 1976. In both cases this Court found that the distinctions based on residency were not rationally related to any state purpose. In Zobel, the one purpose

asserted by the state that is similar to the purpose for the retrospective application of § 8113(b), is the state's interest in rewarding citizens for past contributions. This Court rejected that purpose in Shapiro v. Thompson, 394 U.S. 618 (1969). In that case the recognition of citizens' prior contributions through the payment of taxes was rejected. Clearly, such an alleged contribution is far too vague to sustain a statutory distinction based upon it; in reality, a citizen's payment of his taxes is merely his compliance with a duty already owed. As discussed, supra, the return of a resident to Guam for government service after his education involves a voluntary act that potentially causes a significant sacrifice and hardship. The rewarding of such a distinct and affirmative act is clearly distinguishable from rewarding

a citizen's past compliance with the state tax laws.

Similarly, in Hooper this Court found that the pre-May 8, 1976 residency requirement was not rationally connected with the state's purpose of expressing gratitude to those residents of New Mexico whose lives were disrupted by the Vietnam War. While the Court recognized that resident veterans as a group could be recognized, it correctly denied that those veterans who resided in New Mexico prior to May 8, 1976 and then re-established their residency after their discharge were deserving of greater gratitude than those veterans who came to New Mexico after May 8, 1976 for the first time. As explained, supra, this reasoning should not govern the present situation because the returnees to Guam are, on a rational basis, worthy of greater gratitude than are those

who came to Guam for the first time when they entered government service. In Hooper, all resident veterans made the same sacrifice regardless of whether they were residents of New Mexico prior to May 8, 1976. In the present case, only those who were residents of Guam at the start of their college education potentially made the sacrifice that Guam has rewarded retrospectively under § 8113(b). This Court should not allow the striking down all distinctions made on the basis of residency simply because the trend is in that direction. By misapplying Zobel and Hooper, the Ninth Circuit Court of Appeals has blindly followed that trend, and this misapplication of the law should be corrected.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted

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